

S&U-9 Business Purchases

Introduction

This bulletin provides information on the taxability of business purchases of various goods and services. It explains when a business owner is required to pay sales tax on a purchase, when a sales tax exemption certificate may be used and indicates when use tax is due. The taxability of services performed on real property (e.g., building repairs or improvements, landscaping) is not discussed in depth here. For more information on this topic, request Tax Topic Bulletin S&U-2, Sales Tax and Home Improvements, and S&U-3, Contractors and New Jersey Sales Tax.

General Information

Registration Requirements

Every person or entity engaged in selling taxable goods or services in this State or otherwise conducting business in New Jersey must register with the State for tax purposes. Conducting business includes maintaining a place of business in New Jersey, owning business property here, and employing workers in this State.

To fulfill the registration obligation, you must file a business registration application (Form NJ-REG) at least 15 business days prior to starting business or opening an additional place of business in New Jersey. If the application indicates that you will be collecting sales tax or purchasing materials for resale, you will receive a New Jersey Certificate of Authority for sales tax (Form CA-1). This certificate is your authorization from the State of New Jersey to collect sales tax and to issue or accept exemption certificates. A Public Records Filing may also be required, depending upon the type of business ownership. More information on Public Records filing is available in the *New Jersey Complete Business Registration Package* (NJ REG) or by calling 609-292-9292.

Form NJ-REG may be filed online from the Division of Revenue's New Jersey Business Gateway Services Web site at: www.state.nj.us/njbgs/. The public records filing required for corporations, limited liability companies, limited part-

nerships, and limited liability partnerships may also be completed online from this Web site.

Sales Tax

The New Jersey Sales and Use Tax Act imposes a tax of 6% upon the receipts from every retail sale of tangible personal property and the sale of certain services, except as otherwise provided in the Act. This means that in New Jersey, most items and most services performed upon tangible personal property are taxable unless they are specifically exempted by law. Tangible personal property is property that can be owned or leased, has a physical presence and is moveable (with or without difficulty).

NOTE: A qualified business located in one of New Jersey's reduced sales tax rate Urban Enterprise Zones or UEZ-impacted business districts will charge 3% sales tax on all sales of merchandise qualified for the reduced rate. For more information on Urban Enterprise Zones or UEZ-impacted business districts, visit the New Jersey Commerce and Economic Growth Commission's Web site at: www.state.nj.us/commerce/uezhome.htm or request the publication *Urban Enterprise Zone Tax Questions and Answers Booklet*.

As a business owner, you are required to pay sales or use tax on all purchases of goods and services used by your business which are not held for resale or exempt by law. You are required to pay sales tax on all purchases of office supplies, including furniture, business equipment, and stationery that you use in connection with your business since you are the ultimate consumer of these items. However, businesses

may purchase certain tangible personal property and services without paying sales tax if the intended use is specifically exempt under New Jersey law. Examples of such exempt-purpose items include production machinery and wrapping supplies. See *Exempt Use Certificate (Form ST-4)* on page 3.

For more information on the taxability of goods and services, request Tax Topic Bulletin S&U-4, *New Jersey Sales Tax Guide*, and S&U-6, *Sales Tax Exemption Certificates*.

Use Tax

Use tax is a tax which you must pay directly to the State whenever you purchase taxable goods or services that are used in New Jersey and the vendor did not collect sales tax, or when you pay sales tax at a rate less than the New Jersey sales tax rate on purchases made in another state. If sales tax is not paid on such goods, the person who uses or stores the goods in New Jersey owes a use tax (unless the goods are held for resale). The New Jersey use tax rate is 6%, the same as the sales tax rate. The amount of use tax due is based on the purchase price of the item. The following are examples of when use tax is due:

- Catalog, mail-order, or Internet purchases — When you purchase goods and services through the mail, over the phone, or on the Internet and those items are normally subject to New Jersey sales tax, you owe 6% use tax to New Jersey on the amount of the purchase price if New Jersey sales tax was not paid.
- Buying goods in a state with no sales tax (e.g., Delaware) to bring back to New Jersey — You owe 6% use tax to New Jersey.

- Buying from an out-of-State seller who ships or delivers goods to you in New Jersey and does not charge sales tax — You owe 6% use tax to New Jersey.
- Buying from an out-of-State seller who charges sales tax at a rate lower than New Jersey's — You owe use tax to New Jersey on the difference between New Jersey's 6% sales tax rate and the tax rate in the other state, provided that New Jersey has reciprocity with the other state. For example, if you paid 5% sales tax in another state, you are required to submit 1% use tax to New Jersey.

NOTE: If the tangible personal property purchased outside of New Jersey is entitled to exemption in New Jersey (e.g., production machinery), you are not required to remit use tax.

For more information on use tax, request publication ANJ-7, *Use Tax in New Jersey*.

Remitting Use Tax — Businesses registered with New Jersey for sales tax purposes report use tax on New Jersey Sales and Use Tax Returns (Forms ST-50 and ST-51). Certain “Non-vendor” businesses (i.e., businesses that are registered with New Jersey but neither sell taxable goods or services nor lease taxable property to others) may be eligible to remit use tax annually on purchases where sales tax was not paid or paid at a rate lower than New Jersey's. You may file an Annual Business Use Tax Return (Form ST-18B) only if you are a nonvendor whose *average* annual use tax liability for the three preceding calendar years is \$2,000 or less. If your use tax liability exceeded that average, or if you are a vendor, you must use Forms ST-50 and/or ST-51. For more information on filing sales and

use tax returns, request Tax Topic Bulletin S&U-7, *Filing Sales & Use Tax Returns*.

Exemption Certificates

In certain situations, a business may use an exemption certificate to purchase goods or services without paying sales tax. Each exemption certificate has a specific use.

Resale Certificate (Form ST-3)

A registered New Jersey business that purchases tangible personal property with the intention of reselling it, either in its present form or after it has been incorporated into other property held for sale, may issue a Resale Certificate (Form ST-3) to the seller in lieu of paying sales tax. A registered business may also issue Form ST-3 to purchase certain services without paying sales tax. Sales tax is collected when the property or services are subsequently sold at retail. A New Jersey Resale Certificate may be issued to purchase:

- Inventory which is intended for resale, rental, or lease
- Property which is actually transferred to the purchaser of a taxable service in conjunction with the performance of such service
- Raw materials which will become component parts of a finished product
- Services for resale
- Services performed on tangible personal property held for resale

Exempt Use Certificate (Form ST-4)

An Exempt Use Certificate (Form ST-4) may be used to purchase packaging supplies, production machinery, and certain other items without pay-

ing sales tax provided that the way the item(s) are *used* is specifically exempt under New Jersey law. Qualified exempt purchases for which a New Jersey Exempt Use Certificate may be issued include, but are not limited to:

- Advertising materials to be published in a newspaper
- Advertising materials for out-of-State distribution, and direct-mail services related to the distribution of such materials
- Certain aircraft and equipment
- Certain broadcasting equipment
- Certain buses
- Certain chemicals and catalysts
- Certain commercial trucks and trailers
- Certain property used in the production of film and video for sale
- Commercial fishing boats
- Commercial printing machinery and equipment
- Telecommunications equipment (sold to a telecommunications service provider)
- Newspaper production machinery
- Packaging materials
- Production machinery and equipment
- Recycling equipment
- Research and development materials
- Solar energy devices or systems

For more information on using Form ST-3, Form ST-4, or other exemption certificates,

request Tax Topic Bulletin S&U-6, *Sales Tax Exemption Certificates*.

Purchases of Tangible Personal Property

Equipment

When you purchase office equipment (e.g., fax machines, copiers, computers, desks, etc.) and office supplies (e.g., stationery, paper towels, pens, pencils) for use in your business, you are required to pay sales tax. If you purchase any of these items and do not pay sales tax at the time of purchase, you owe use tax.

Example

Taylor Lynn purchased a computer through a mail order company located in Tennessee. The company does not have an office in New Jersey and is not registered to collect New Jersey sales tax. They bill her \$2,599 for the equipment plus a \$50 shipping charge. She must remit \$155.94 use tax ($\$2,599 \times .06 = \155.94) to New Jersey because sales tax was not collected by the vendor. There is no tax on the shipping charge provided that it is separately listed on the bill.

Rentals

When you rent office equipment such as copiers, computers, desks, or postage meters, you are required to pay sales tax. The New Jersey Sales and Use Tax Act defines a rental as a short-term transaction, with an original contract term of no more than 28 days. Rental transactions are treated as retail sales and the renter pays sales tax on the amount of the rental payment. Where the rental includes the services of an operator, such as with construction

equipment, and a separate billing is made for the rental of equipment and the services of the operator, only the rental charge for the equipment is subject to sales tax; the charge for the operator's services is exempt from sales tax. However, if the charges are not separately stated on the invoice, the entire invoice amount is subject to tax.

Leases

The New Jersey Sales and Use Tax Act defines a lease as a long-term transaction with an original contract term of more than 28 days. The lessor (generally the owner of the property) is responsible for paying use tax based on either the purchase price of the property or the total amount of payments attributable to the lease (not including separately stated, nontaxable charges such as finance charges). The lessor does *not* collect sales tax from the lessee.

When use tax is paid on the purchase price, it does not have to be paid again if the lease is renewed or the property is re-leased by the same lessor. Lessors who elect to pay tax on the total amount of payments attributable to the lease must pay use tax each time a lease is renewed or a new lease is signed. When property is leased, the lessor issues a Lessor Certification (Form ST-40) certifying that the lessor will pay the tax due directly to the Division of Taxation at the beginning of the lease. For more information on the sales and use tax treatment of rentals and leases, request Tax Topic Bulletin S&U-12, *Leases and Rentals*.

Computer Software

In general, off-the-shelf, or "canned" software is subject to sales tax as tangible personal property. However, software may be considered

intangible property if the vendor has created it for a particular customer or has substantially modified it for the customer in such a way that the customer is purchasing the vendor's professional services (e.g., consulting, programming) in creating a customized software package. If the software qualifies as a custom package, any licensing fees and maintenance agreements are also exempt from sales and use tax.

Employee Incentives, Giveaways, Awards

When you purchase items to be used as employee incentives, giveaways, and/or awards, you must pay sales tax. If you purchase items intended for resale using a Resale Certificate (Form ST-3) which later become giveaways and/or awards, you owe use tax on the purchase price of the items.

Packaging Supplies

Nonreturnable materials used to contain, protect, wrap, and ship your product to customers are exempt from New Jersey sales tax. You may issue a New Jersey Exempt Use Certificate (Form ST-4) to your supplier when purchasing these items and not pay sales tax. The packaging materials must be used in the delivery of your product to qualify for the exemption. Inventory storage containers are not considered to be exempt packaging materials. However, containers that are used in a farming enterprise are exempt.

Example

Brittany James owns a company that manufactures radios. In order to deliver the radios to wholesalers, she must package them in cardboard boxes and seal the boxes with tape. When Brittany purchases the boxes and rolls

of tape, she issues her supplier an ST-4 exemption certificate and does not pay sales tax. However, she may not use an ST-4 when purchasing tape dispensers, which are not part of the packaging used to deliver the radios.

Books and Periodicals

When you purchase books, including the Bible or similar sacred scripture, you are required to pay sales tax. Purchases of newspapers, magazines, and periodicals, however, are specifically exempt from sales tax.

Research and Development

Materials that you purchase for use or consumption directly and exclusively in research and development in the experimental or laboratory sense are exempt from sales tax provided an Exempt Use Certificate (Form ST-4) is given to your supplier at the time of purchase. For more information on the exemptions available to research and development businesses, request Tax Topic Bulletin S&U-6, *Sales Tax Exemption Certificates*.

Purchases of Services

Advertising

Most advertising *services* are exempt from New Jersey sales and use tax. However, direct-mail advertising processing services are subject to tax if the advertising material will be distributed to recipients within New Jersey. Advertising *material* is generally subject to New Jersey sales and use tax as tangible personal property.

Advertising services means all professional services rendered in the creation of advertising, promotional, and/or public relations material, including most creative/preparation, preproduc-

tion, and administrative services performed for the purpose of producing such material.

As a rule, exempt advertising services are those performed by an advertising services provider “prior to the final delivery” of a computer disk, mechanical, or other similar medium to a client, printer, service bureau, or other vendor of tangible personal property for the purpose of producing advertising and/or promotional material. “Final delivery” is deemed to occur after all alterations to copy, design, and formatting have been completed, including any necessary computer retouching and high-resolution scanning. The disk, mechanical, or similar medium itself is deemed to be inconsequential to the professional services and as such is not subject to tax.

Creative services contracted by and performed for an advertising service provider by such freelance creative professionals as copywriters and artists are not subject to tax when billed to the service provider or subsequently, when the service provider bills the client.

Advertising agencies do not charge clients tax on their professional services and are therefore deemed to be the retail purchasers of most tangible personal property and services used in rendering those advertising services. Materials and services directly incorporated into advertising services are generally considered expenses incurred by the advertising service provider in the performance of nontaxable services. The advertising service provider must pay sales tax when making such purchases and may not claim a resale exemption. However, scanning and retouching services to photography and artwork performed in conjunction with creative advertising services may be taxable to the client in certain circumstances. The advertising service

provider may issue a Resale Certificate (Form ST-3) when purchasing tangible personal property or services (e.g., scanning and retouching services) for which the client will be charged sales tax.

NOTE: Advertising-related services are taxable if they also belong to some other category of taxable service. For example, imprinting logos on promotional items supplied by the customer is a taxable imprinting service; installing an electrical advertising display is a taxable installation service.

Example

An advertising agency pays \$1,000 to a stock photo house for the right to use some illustrations (photographs, etc.) in the promotional material it is preparing for a client. The stock photo house charges the agency 6% sales tax on the fee for the use of the illustrations. The agency performs creative and other nontaxable preproduction services valued at \$9,000 to complete the promotional piece and then invoices its client a total of \$10,060 (assuming no markup is added to the \$1,060 expense incurred for license-to-use artwork).

Direct-mail advertising processing services means the physical processing services performed in connection with the dissemination of direct-mail advertising material. Such services include, but are not limited to, folding, inserting, sorting, bagging, sealing, stamping, and affixing labels and postage to direct-mail advertising material. Charges for direct-mail advertising processing services are taxable when performed on advertising material that will be distributed within New Jersey.

Example

Robert Williams hires a direct-mail advertising firm to prepare and distribute flyers promoting his business to 20,000 households, 5,000 of which are located in New Jersey. Robert is required to pay sales tax only on the charges for the direct-mail advertising material distributed within New Jersey, including any charges for processing services related to the distribution of those 5,000 flyers.

Advertising material means anything produced in a tangible form which is intended to attract public notice and attention, and includes all forms of announcement which aid directly or indirectly in furthering public notice of a business, commodity, service, or entertainment.

Taxable advertising materials include such items as advertising posters, printed advertising brochures, promotional video cassettes, etc. Purchases of such materials are exempt from tax when the materials are delivered out-of-State. Although most advertising materials are subject to sales tax, the New Jersey Sales and Use Tax Act provides a specific exemption from tax for all advertising services *and materials* (including inserts) used to create, prepare, and place advertisements in a newspaper or magazine.

Charges for the sale or rental of advertising space are exempt from sales tax. This includes charges for leasing or renting advertising space on billboards, buses, Web sites, etc.

Internet Services

Web Site Design—Charges for creating and/or designing a Web site for advertising or promotional purposes are exempt from New Jersey

sales tax just as are the charges for the design of a brochure or other advertising material.

Web Site Internet Storage—Charges for housing a Web page are exempt from sales tax as a charge for advertising space.

Internet Consulting—Charges for consulting services are generally exempt from sales tax as professional services provided that the charges are separately stated on the invoice.

Online Access Services—Charges to access the Internet are not subject to sales tax. Online service users pay sales tax on the telecommunication charges incurred when connecting to the Internet, which are billed directly by the telecommunications service provider.

Maintenance and Repair Services

Real Property—You are required to pay sales tax on all charges for services performed in conjunction with maintaining, servicing, or repairing real property (i.e., land, buildings). For more information on the taxability of real property maintenance and repair services, request Tax Topic Bulletin S&U-2, *Sales Tax and Home Improvements*, or S&U-3, *Contractors and New Jersey Taxes*.

General home and office cleaning (janitorial services) as well as window washing services are subject to sales tax whether or not performed on a regular contractual basis. Rug and carpet cleaning and cleaning of upholstered fabrics, including draperies, are exempt from sales tax as a laundering service. However, if the charges for general office cleaning and the charges for carpet cleaning are not separately stated on the invoice, the entire receipt is subject to sales tax.

Charges for the removal of garbage, rubbish, trash, and recyclables are exempt from sales tax where the services are performed on a regular contractual basis for a term of not less than 30 days. Charges for parking lot sweeping, snow plowing, and lawn maintenance are all services subject to sales tax in New Jersey, whether the services are performed on a regular contractual basis or not.

Tangible Personal Property—You are required to pay sales tax on all charges for maintaining, servicing, or repairing tangible personal property. A maintenance contract (for computer hardware, electronics equipment, etc.) is considered to be a prepayment for taxable services to tangible personal property, and is subject to sales tax when the contract is purchased. When services are provided under a maintenance contract no tax is due since it was paid when the agreement was purchased.

Example

When EvironCo has a service technician come to their office to repair a computer, the charges, if any, incurred for parts and labor are subject to sales tax. However, if the computer was covered by a maintenance contract, there would be no tax due on the parts or labor for a qualified repair.

Printing and Reproduction Services

You are required to pay sales tax on all purchases of printing and reproduction services. Printing services include purchases of business cards, stationery, engraved items, etc. If you ordered these items through a mail-order catalog without paying sales tax, you owe use tax on the total amount of the purchase.

Professional Services

You are not required to pay sales tax on charges for professional services such as consultation, inspection, typing, legal, accounting, or payroll services.

Telecommunications Services

Charges for telephone service, pager, cellular phone, and fax services are subject to sales tax in New Jersey, as are the charges for the equipment itself. Charges for repair or maintenance services for telephones or telephone equipment are also subject to sales tax. For more information on the taxability of telecommunications services, request Tax Topic Bulletin S&U-10, *Telecommunications*.

Telephone Answering Services

Telephone answering services are included in the definition of telecommunications and are subject to sales tax in New Jersey. Only telecommunications services rendered with respect to a service address in New Jersey are taxed. New Jersey sales tax is not imposed on charges for telephone answering services for a telephone located in another state.

Alarm Systems

Sales of alarm systems are taxable when purchased without an installation agreement. However, when a contractor sells an alarm system and agrees to install the system as part of the same contract, the entire receipt is exempt from sales tax if the installation results in a capital improvement to real property and a Certificate of Capital Improvement (Form ST-8) is provided to the installer of the system. When a vendor sells and installs an alarm system, and the installation does *not* result in a capital im-

provement, both the cost of the alarm system and the installation service are subject to sales tax. Sales of portable and/or mobile systems are also subject to sales tax.

Direct Alarm Monitoring Systems—Direct alarm monitoring systems require the use of a control panel which is **rented or leased** to the property owner by the alarm company and installed in both the place of business and a police station. The installation of alarm monitoring equipment which is rented or leased rather than purchased does not result in a capital improvement because ownership of the equipment remains with the lessor. Therefore, charges for the installation of a direct alarm monitoring system are taxable.

Alarm Monitoring Services—Fees charged for monitoring services for both central monitoring systems (by an alarm company) and direct monitoring systems (by the telephone company) are taxable.

NOTE: Sales tax is charged only on the monitoring service for alarm systems with a service address in New Jersey. Alarm monitoring services charged to a service address outside New Jersey are not subject to tax.

Charges for security guard services are exempt from sales tax as professional services. For more information on alarm systems and alarm system businesses, request Tax Topic Bulletin S&U-8, *Alarm System Businesses*.

Miscellaneous Services

Charges for transportation services for both persons and tangible personal property are exempt from sales tax as long as the charges are sepa-

rately stated on the billing document. Examples include: limousine services, courier services,

and shipping (United Parcel Service, Federal Express, etc).

For More Information

By Phone

- Call the Division of Taxation's Customer Service Center at **609-292-6400**
- TTY equipment users call **1-800-286-6613** (within NJ, NY, PA, DE, and MD) or **609-984-7300** (anywhere)

Online

- Division of Taxation Web site:
www.state.nj.us/treasury/taxation/
- E-mail: **taxation@tax.state.nj.us**

In Writing

New Jersey Division of Taxation
Information and Publications Branch
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Order Forms and Publications

- Call the Forms Request System at **1-800-323-4400** (Touch-tone phones within NJ, NY, PA, DE, and MD) or **609-826-4400** (Touch-tone phones anywhere)
- Call NJ TaxFax at **609-826-4500** from your fax machine's phone
- Visit the Division of Taxation's Web site:
www.state.nj.us/treasury/taxation/